

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**NANCY A. FLORO**

Claimant

VS.

**BLUE CROSS & BLUE SHIELD, INC.**

Respondent

Self-Insured

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Docket No. 222,512

**ORDER**

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge (ALJ) Bryce D. Benedict on September 4, 1997.

**ISSUES**

The sole issue on appeal is whether claimant's injury arose out of and in the course of her employment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Order by the ALJ denied claimant's request for temporary total disability and medical treatment. On the basis of the findings and conclusions stated below, the Appeals Board concludes that the Order should be affirmed.

Claimant was injured on January 29, 1997, when she was struck by an automobile as she walked across 12th Street at the intersection of 12th and Tyler in Topeka, Kansas. The accident occurred at approximately 6:40 a.m. Claimant was walking from the parking lot owned by Blue Cross & Blue Shield at the southwest corner of Tyler and 12th. Although there is a traffic signal at the intersection where claimant crossed, claimant did not push the button to change the signal so that traffic would be stopped by a red light as she crossed. Instead, claimant waited for the one vehicle she saw coming to pass. She saw nothing else coming and attempted to cross at the crosswalk. She was almost to the

opposite curb when the car struck her. There was construction on one-half of 12th Street between Topeka Boulevard and Tyler.

The facts in the present case are similar to those addressed by the Kansas Supreme Court in Chapman v. Beech Aircraft Corp., 258 Kan. 653, 907 P.2d 828 (1995). As in Chapman, claimant in the current case was not yet to work at the time of the accident and injury. Claimant seeks to recover benefits under the “special hazard” exception to K.S.A. 44-508(f) “going and coming rule.” In the Chapman decision, the Supreme Court defined the special hazard exception as follows:

The K.S.A. 44-508(f) special hazard exception to the going and coming rule of the Kansas Workers Compensation Act contains three elements: (1) The worker must be on the only available route to or from work; (2) the route must involve a special risk or hazard; and (3) the route must be one not used by the public except in dealing with the employer.

As claimant points out, the only evidence in the record establishes that two of these criteria have been met. The route from the parking lot across to respondent’s facilities was “generally” the only available route in the same sense that crossing Central Street was the only route available in Chapman. Claimant has testified, and the only evidence in the record indicates, that the route is used only by employees of respondent and other persons in their dealings with respondent. Claimant has, therefore, satisfied two of the three criteria. The issue remaining is whether the claimant has established that the route involved a special hazard. In the Chapman case, the Court discussed numerous decisions from other states which address this question, namely whether traffic on a particular street involves a special hazard. In summary, the Kansas Supreme Court states:

In our view, vehicle traffic may constitute a special hazard, depending on the circumstances. The record indicated that Central Street is a busy public street in Wichita, the largest city in Kansas. The Board found: “Central Street, in that vicinity, is a major city artery to several businesses in east Wichita.” . . . We hold that Chapman carried her statutory burden under K.S.A. 44-501(a) to show that crossing Central Street was a special risk or hazard.

In this case the Administrative Law Judge found that claimant failed to show that the crossing involved a special risk or hazard. He cites testimony that the traffic in the morning was light. He also cites the availability of a traffic signal to make the route a safe one. The record contains no other evidence regarding how safe or hazardous this crossing might be. Without further evidence on this issue, the Appeals Board finds that, based upon the record presented to date, claimant has not met her burden to show that the route involved a special risk or hazard.

**WHEREFORE**, the Appeals Board finds that the Order of Administrative Law Judge Bryce D. Benedict, dated September 4, 1997, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1997.

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BOARD MEMBER

c: Patrick M. Salsbury, Topeka, KS  
Michael J. Unrein, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director